

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 989 - HB 1365

March 12, 2021

SUMMARY OF ORIGINAL BILL: Requires counties, municipalities, municipal corporations, and special school districts which operate self-funded insurance plans (plans) to provide certain notice to plan participants regarding the local government's right to recover certain costs paid to plan participants by third parties. Establishes a procedure by which an applicable local government shall seek to recover such costs.

FISCAL IMPACT OF ORIGINAL BILL:

Increase Local Expenditures – Exceeds \$1,000/FY21-22 and Subsequent Years*

Other Fiscal Impact – The extent and timing of any increase in local revenue from additional judgement awards by courts cannot reasonably be determined.

SUMMARY OF AMENDMENT (004625): Deletes and rewrites language of the original bill such that the substantive changes: (1) remove a limitation within the definition of "plan"; (2) remove an automatic decrease in fees which can be collected by a plan participant's attorney in certain circumstances; (3) make certain awards by the court discretionary instead of mandatory; and (4) authorize courts to award plan participants certain damages if a certain motion is filed in bad faith.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 8-27-507 and § 8-27-608: counties, municipal corporations, and special school districts are authorized to recover costs for care or treatment of an injury or an illness paid by a third-party insurance to a plan participant.
- The proposed language:
 - Attaches the reimbursement and subrogation right of the applicable local government automatically as a lien against any proceeds paid to a plan participant by a third party for the cost of care or medical treatment;

- Places certain notification requirements on third parties, when information is requested by applicable local governments;
- Requires, at each enrollment period, the applicable local government to provide plan participants, either by certified mail or through an electronic platform maintained by the local government, information regarding the plan's right to recover such costs in certain circumstances;
- Requires applicable local governments to provide written correspondence with plan participant attorneys via certified mail, with receipt verification; and
- Authorizes courts to determine amounts of subrogation and reimbursement interest, damages, attorneys' fees, and litigation costs based on varying factors and actions between plan participants and applicable local government.
- The proposed language will result in a mandatory increase in local expenditures for providing notice via certified mail; however, the extent of expenditures for individual local governments will vary based on the extent and frequency such notices.
- While a precise mandatory increase for notifications and mailings cannot be determined it is reasonably estimated to exceed \$1,000 statewide, each year.
- The proposed language may result in an increase in payments awarded by courts, including the award of additional attorneys' fees, to local governments. The extent and timing of any increase in local revenue cannot reasonably be determined.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Bojan Savic, Interim Executive Director

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